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February 12, 2008

VIA E-FILE AND U.S. MAIL

The Honorable Sandra B. Armstrong  
United States District Court  
Northern District of California  
1301 Clay Street, Suite 400S  
Oakland, CA 94612-5212

Re: *Mohanty v. Bigband Networks, Inc.*  
No. C 07-5101-SBA

Dear Judge Armstrong:

We write in response to defendants' February 11, 2008 letter which, we believe, is an improper attempt to delay plaintiff's motion to remand the above-captioned action. Plaintiff's remand motion is currently set to be heard before Judge Breyer on February 22, 2008.

On January 18, 2008, plaintiff filed a motion to remand his case to the California Superior Court where it was properly filed. Plaintiff's case solely alleges violations of the Securities Act of 1933 ("Securities Act"). As set out below, that motion is nearly fully briefed. Any decision on relating that case to cases before Your Honor should wait until after Judge Breyer rules on plaintiff's remand motion.

On January 25, 2008, defendants sought an extension to the briefing schedule on plaintiff's remand motion because, in their view, "the case would likely be transferred to Judge Armstrong before the remand motion is heard as currently noticed." See January 25, 2008 letter. On January 31, 2008, Judge Breyer granted the briefing extension but reaffirmed a hearing date in his Court of February 22, 2008. Even though Judge Breyer had reaffirmed the hearing date and set a briefing schedule **and** despite the fact that plaintiff in the above-captioned matter is not a party to the cases pending before Court, it is clear that defendants intended to: (i) have this Court relate this case to cases pending in this Court at the February 5, 2008 Case Management conference; and (ii) have plaintiff's remand motion renoticed at a later date. Indeed, defendants' February 11, 2008 letter admits that this was their goal. See February 11, 2008 letter at 2. When the February 5, 2008 Case Management Conference was canceled, defendants filed their opposition brief on February 8, 2008 before Judge Breyer.



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The matter before Judge Breyer will be fully briefed when plaintiff's reply is filed this Thursday or Friday. Nevertheless, defendants have again sought to try to delay the remand hearing by filing an improper letter with this Court and with Judge Breyer. See February 11, 2008 letter at 2 ("[Defendants] intended to bring these [issues concerning the remand motion and the related case issue] to the Court's attention at the Case Management Conference originally scheduled for February 5.").

It is axiomatic that plaintiff's motion to remand involves the subject matter jurisdiction of the Court and is entirely separate from any other issues pending before Your Honor. The sole issue is whether plaintiff's action should be remanded to the Superior Court because the Securities Act expressly precludes the exercise of jurisdiction by a federal court over Securities Act cases that are commenced in state court. Should Judge Breyer determine that the Court lacks subject matter jurisdiction, this case must be remanded to state court and defendants' request to relate these cases will be moot.

Because the remand issue is separate and apart from the procedural matters to be addressed in the cases before this Court and relates solely to whether or not this case should be in federal court at all, we think it should be decided expeditiously. There is no prejudice to any party to allow this motion to proceed as scheduled before Judge Breyer.

Respectfully submitted,

DARREN J. ROBBINS

DJR:plc

cc: Keith E. Eggleton, Esq.  
Jeffrey W. Lawrence, Esq.

(Distribution list provided by defendants with 2/11/08 letter)

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 12, 2008.

s/ Jeffrey W. Lawrence

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